

days, to cure such defect. After the preliminary review and after affording the State such opportunity to cure defects, the Regional Administrator, except as provided in §1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for rejecting the change, the procedures provided in §§1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced either for rejection of the change or for failure to submit the change, in accordance with the procedures in §1902.17 of this chapter on rejection of state plans.

(e) The Assistant Secretary shall review the supplement in the context of the entire plan to determine its impact on the "at least as effective as" status of the plan. The decision shall reflect the Assistant Secretary's determination as to whether the change meets that requirement.

[38 FR 24361, Sept. 7, 1973, as amended at 39 FR 5630, Feb. 14, 1974]

Subpart F—Advisory Opinions

§ 1953.50 Definitions.

(a) An authorized representative of a State agency or agencies designated under section 18(c)(1) to administer a plan may request an advisory opinion from the Regional Administrator. These opinions are designed to provide the State with a basis for implementing a change. For example, prior to publication of standards, the State may want a preliminary opinion that the standards are at least as effective as the Federal standards or that a regulation that will be proposed for public comment in the State appears to meet

the requirements of section 18 of the Act and part 1902.

(b) A request for an advisory opinion ordinarily will be considered inappropriate when extensive investigation or evaluation would be necessary. A requesting State will be informed if the same or substantially similar course of action is under review for an advisory opinion in another State or if it has been the subject of a current evaluation, approval, or disapproval proceeding by the Assistant Secretary.

§ 1953.51 Submission and consideration.

(a) The request for advice should be submitted in writing to the Regional Administrator in whose Region the State is located and should include full and complete information regarding the proposed course of action. Conferences with members of the Regional and National office staff may be held before and after submittal of the request and submission of additional information may be required.

(b)(1) On the basis of the facts submitted, as well as other information available to him, including information from interested persons where relevant, the Regional Administrator, after appropriate consultation with the Office of Federal and State Operations and the Office of the Solicitor will provide an advisory opinion to the State and may take such other action as may be appropriate.

(2) Because of the possibility that the subject matter of an advisory opinion may change during promulgation by the State as a final change, and in order to provide for public comment on the final change, these opinions cannot bind the Assistant Secretary in making his final decision following the procedures specified in the appropriate subparts of this part. If the Assistant Secretary decides to revoke or rescind the advisory opinion, notice of such rescission or revocation will be given to the requesting State so that it may discontinue the course of action taken. The Assistant Secretary will not proceed against the requesting State with respect to any action taken in good faith reliance upon the advice given under this subpart, where all relevant

facts are fully, completely, and accurately presented and where such action was promptly discontinued upon notification by the Assistant Secretary.

(c) When a State has obtained an advisory opinion under this part, the formal change supplement submitted under the applicable subpart of this part shall specify in what areas, if any, it differs from the material submitted for an advisory opinion.

(d) No later than 15 days after the State has been sent the requested advice, the advisory opinion, and any supplementary information will be placed with the requesting State's plan at the location specified in the subpart of part 1952 of this chapter relating to the State plan.

PART 1954—PROCEDURES FOR THE EVALUATION AND MONITORING OF APPROVED STATE PLANS

Subpart A—General

Sec.

1954.1 Purpose and scope.

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Subpart C—Complaints About State Program Administration (CASPA)

1954.20 Complaints about State program administration.

1954.21 Processing and investigating a complaint.

1954.22 Notice provided by State.

AUTHORITY: Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

SOURCE: 39 FR 1838, Jan. 15, 1974, unless otherwise noted.

Subpart A—General

§ 1954.1 Purpose and scope.

(a) Section 18(f) of the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) provides that “the Sec-

retary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved * * * is carrying out such plan.”

(b) This part 1954 applies to the provisions of section 18(f) of the Act relating to the evaluation of approved plans for the development and enforcement of State occupational safety and health standards. The provisions of this part 1954 set forth the policies and procedures by which the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12-71, 36 FR 8754, May 12, 1971) will continually monitor and evaluate the operation and administration of approved State plans.

(c) Following approval of a State plan under section 18(c) of the Act, workplaces in the State are subject to a period of concurrent Federal and State authority. The period of concurrent enforcement authority must last for at least three years. Before ending Federal enforcement authority, the Assistant Secretary is required to make a determination as to whether the State plan, in actual operation, is meeting the criteria in section 18(c) of the Act including the requirements in part 1902 of this chapter and the assurances in the approval plan itself. After an affirmative determination has been made, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out section 18(f) of the Act), 9, 10, 13, and 17 of the Act shall not apply with respect to any occupational safety or health issues covered under the plan. The Assistant Secretary may, however, retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 of the Act before the date of the determination under section 18(e) of the Act.

(d) During this period of concurrent Federal and State authority, the operation and administration of the plan will be continually evaluated under section 18(f) of the Act. This evaluation will continue even after an affirmative determination has been made under section 18(e) of the Act.